

Recorded at the Request of  
FIRST AMERICAN TITLE CO.

COVENANT OF DEED RESTRICTION

DEC 2 1992

8:00 A.M.  
MONTEREY COUNTY RECORDER

Recording Requested By:

Southern Pacific Transportation Company

When Recorded, Mail To:

85938

Department of Toxic Substances Control  
Region 2  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710  
Attention: Barbara J. Cook, P.E., Chief  
Site Mitigation Branch

THIS INSTRUMENT FILED FOR RECORD BY  
FIRST AMERICAN TITLE INSURANCE COMPANY  
AS AN ACCOMMODATION ONLY. IT HAS NOT  
BEEN EXAMINED AS TO ITS EXECUTION OR AS  
TO ITS EFFECT UPON THE TITLE.

COVENANT  
TO RESTRICT USE OF PROPERTY

The Former "Berman Steel" Site  
Salinas, California

R	23
M	1
RF	21
TC	20
T	65

This Covenant and Agreement ("Covenant") is made on the  
25TH day of NOVEMBER, 1992 by Southern Pacific Transportation  
Company ("Covenantor"), which is the owner of record of  
certain property situated in Salinas, County of Monterey,  
State of California, described in Exhibit "A" attached hereto  
and incorporated herein by this reference and as shown in  
Exhibit "B" attached hereto and incorporated herein by this  
reference (the "Property"), and by the Department of Toxic  
Substances Control (the "Department"). Covenantor and the  
Department desire and intend that in order to protect the  
present and future public health and safety, the Property  
shall be used in such a manner as to avoid potential harm to

persons or property which may result from hazardous substances which have been deposited on the Property.

ARTICLE I

STATEMENT OF FACTS

1.01 Description of contamination. The Property consists of approximately two (2) acres and is a former scrap metal facility which was operated by Aaron Berman, owner and operator of Berman Steel Company, from 1962 until November 1981. Aaron Berman leased the Property from the owner, Southern Pacific Transportation Company. Past operations, including dismantling used electrical transformers sent by Pacific Gas & Electric for recycling, resulted in soils contaminated with polychlorinated biphenyls (PCBs), lead, zinc, and copper. This contamination was remediated in accordance with the Remedial Action Plan (RAP) Workplan prepared by Dames & Moore and approved by the Department. The final remedial action taken was limited excavation and offsite disposal of contaminated soils at an authorized site followed by capping with clay soil and vegetative cover (CAP) to contain the contaminants on-site. The limited excavation was performed at the boundaries and the central portion of the Property where the remedial investigations had detected elevated levels of PCBs. The Property has been fenced and

1 warning signs were posted after the conclusion of the final  
2 remedial action to restrict access on to the Property.  
3  
4

5 1.02 Health Effects. The potential routes of exposure  
6 to these contaminants are through dermal contact, ingestion  
7 and inhalation of surface runoff water or dusts and  
8 particulates from on-site soil. The risk assessment performed  
9 by Dames & Moore in the "Final Feasibility Study/Remedial  
10 Action Plan" indicated that no significant potential risks are  
11 associated with the Property if access is continued to be  
12 controlled. However, should the potential routes of exposure  
13 to these contaminants not be eliminated, the potential human  
14 health effects resulting from exposure to these contaminants  
15 are as follow:  
16

17 Polychlorinated biphenyls (PCBs). PCBs are moderately  
18 toxic if absorbed through ingestion or skin contact. Adverse  
19 effects from exposures to PCBs include chloracne, impairment  
20 of liver function, a variety of neurobehavioral and affective  
21 symptoms, and minor birth abnormalities. PCBs are a suspected  
22 human carcinogen (Sax 1989).  
23

24 Copper. Copper salts are skin irritants, causing itching  
25 erythema and dermatitis. Copper salts may cause  
26 conjunctivitis in the eyes and ulceration and turbidity of the  
27

cornea. Fumes and dust of copper may cause upper respiratory tract irritation, nausea, and gastrointestinal tract irritation.

Lead. Acute exposure to lead may produce fatigue, headache, aching muscles and bone, gastrointestinal disturbances, sleep disturbance, abdominal pain and decreased appetite. Chronic exposure can lead to irreversible vascular sclerosis, irreversible brain damage, tubular cell atrophy, interstitial fibrosis, and glomerular sclerosis (Sax 1989).

Zinc. Zinc is an irritant, causing throat dryness, coughing, fatigue, aches, chills, fever, nausea, and vomiting (Sax 1989).

1.03 Surrounding Land Use. The Property is located in the greater Salinas area along Highway 101 near Spence Road. The Property is currently zoned for heavy industrial use. Land uses surrounding the Property are agricultural and light industrial. The area within a one-mile radius of the Property is primarily agricultural. There are no schools or hospitals found within a one-mile radius. The nearest home is approximately 300 feet west of the Property.

## ARTICLE II

GENERAL PROVISIONS

2.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest of Covenantor. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Health and Safety Code Sections 25222.1 and 25356.1 and run with the land pursuant to Health and Safety Code Sections 25222.1 and 25230(a)(1). Each and all of the Restrictions are for the benefit of and enforceable by the Department.

2.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees,

and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

2.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all future deeds and leases of any portion of the Property.

### ARTICLE III

#### DEFINITIONS

3.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

3.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

3.03 Occupant(s). "Occupant(s)" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of

the Property. Occupants shall not include an occupant's licensees or invitees.

3.04 Owner(s). "Owner(s)" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

3.05 Director. "Director" shall mean the Director of the California Department of Toxic Substances Control or his or her designee.

#### ARTICLE IV

#### DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

4.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as described in said Exhibit A as follows:

a. Property shall be restricted to commercial or industrial uses.

b. Residential development for human habitation shall not be permitted on the Property.

c. Hospitals or health clinics shall not be permitted on the Property.

d. Day-care centers for either children or senior citizens shall not be permitted on the Property.

e. Schools for children under 21 years of age shall not be permitted on the Property.

f. No drilling for drinking water shall be permitted on the Property.

g. No raising of food (cattle, food crops, cotton) shall be permitted on the Property.

h. Subdivision of the Property is forbidden, except as allowed under Health and Safety Code Section 25232 (a) (2) and (b) (2).

i. No activities which will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Property without a Health and Safety Plan submitted to the Department for review and approval.

j. The Property shall be posted with a bilingual sign in English and Spanish stating that no grading, excavation or construction activities can occur on the Property without written permission of the Department.



1  
2 k. Any contaminated soils brought to the surface by  
3 grading, excavation, trenching or backfilling shall be  
4 managed in accordance with all applicable provisions of  
5 state and federal law.

6  
7 1. All uses and development of the Property shall  
8 preserve the integrity of the Cap and shall not disturb  
9 the integrity of any hazardous waste containment.

10  
11 m. The Owner(s)/Occupant(s) shall maintain all  
12 vegetative ground cover and soil caps, fences, gates and  
13 warning signs, as specified in the Remedial Action Plan  
14 (RAP) Workplan and Operation and Maintenance Plan for the  
15 Site .

16  
17 n. Any proposed alteration of the Cap shall require  
18 written approval by the Department.

19  
20 o. The Owner(s) shall monitor the Cap yearly for  
21 deterioration and integrity of the Cap.

22  
23 p. The Owner(s) shall notify the Department of each of  
24 the following: 1) The type, cause, location and date of  
25 any disturbance to the Cap which could affect the ability  
26 of the Cap to contain subsurface hazardous substances on  
27 the Property and 2) The type and date of repair of such

1 disturbance. Notification to the Department shall be  
2 made by registered mail within ten (10) working days of  
3 both the discovery of cap disturbance and the completion  
4 of repairs.  
5

6  
7 q. If monitoring detects contamination at levels of  
8 concern, the Owner shall develop and submit a plan of  
9 correction for Department approval.  
10

11 r. The Owner(s) grants the Department an easement to  
12 the Property for inspection, surveillance, monitoring,  
13 maintenance, and other activities consistent with the  
14 purposes of this covenant as deemed necessary by the  
15 Department in order to protect the public health and  
16 safety.  
17

18 s. Prior to sale, lease, or rental, the Owner(s) shall  
19 give written notice to purchasers, lessees, and tenants  
20 stating that there is residual contamination as specified  
21 in Health & Safety Code Section 25359.7(a).  
22

23 4.02 Conveyance of Property. The Owner(s) shall provide  
24 a fifteen (15) days advance notice to the Department of any  
25 sale, lease or other conveyance of the Property or an interest  
26 in the Property to a third person. The Department shall not,  
27 by reason of the Covenant, have authority to approve,

1 disapprove, or otherwise affect any sale, lease, or other  
2 conveyance of the Property.  
3

4 4.03 Enforcement. Failure of the Owner(s) to comply  
5 with any of the requirements, as set forth in Section 4.01,  
6 shall be grounds for the Department, by reason of the  
7 Covenant, to require that the Owner(s) modify or remove any  
8 improvements constructed in violation of Section 4.01.  
9 Violation of the Covenant shall be grounds for the Department  
10 to file civil and criminal actions against the Owner(s) as  
11 provided by law.  
12

13 ARTICLE V

14 VARIANCE AND TERMINATION  
15

16 5.01 Variance. Any Owner(s) or, with the Owner(s)'  
17 written consent, any Occupant of the Property or any portion  
18 thereof may apply to the Department for a written variance  
19 from the provisions of this Covenant. Such application shall  
20 be made in accordance with Section 25233, Health & Safety  
21 Code. The Department shall provide notice to the Owner of any  
22 such application by any Occupant.  
23

24 5.02 Termination. Any Owner(s) or, with the Owner's  
25 (s') written consent, any Occupant of the Property or a  
26 portion thereof may apply to the Department for a termination  
27

1 of the Restrictions as they apply to all or any portion of the  
2 Property. Such application shall be made in accordance with  
3 Section 25234, Health & Safety Code. The Department shall  
4 provide notice to the Owner of any such application by any  
5 Occupant.  
6

7 5.03 Term. Unless terminated in accordance with Section  
8 5.02 above, by law or otherwise, this Covenant shall continue  
9 in effect in perpetuity.  
10

11 ARTICLE VI

12 MISCELLANEOUS  
13

14 6.01 No Dedication Intended. Nothing set forth herein  
15 shall be construed to be a gift or dedication, or offer of a  
16 gift or dedication, of the Property or any portion thereof to  
17 the general public or for any purposes whatsoever.  
18

19 6.02 Notices. Whenever any person gives or serves any  
20 notice, demand, or other communication with respect to this  
21 Covenant, each such notice, demand, or other communication  
22 shall be in writing and shall be deemed effective 1) when  
23 delivered, if personally delivered to the person being served  
24 or to an officer of a corporate party being served or official  
25 of a government agency being served, or 2) three (3) business  
26  
27

1 days after deposit in the mail if mailed by United States  
2 mail, postage paid certified, return receipt requested:  
3

4  
5 To: "Covenantor"  
6 Southern Pacific Transportation Company  
7 One Market Plaza  
8 San Francisco, CA 94105

9 Copy to: Department of Toxic Substances Control  
10 Region 2  
11 700 Heinz Avenue, Suite 200  
12 Berkeley, CA 94710  
13 Attention: Barbara J. Cook, P.E., Chief  
14 Site Mitigation Branch  
15

16  
17 6.03 Partial Invalidity. If any portion of the  
18 Restrictions or terms set forth herein is determined to be  
19 invalid for any reason, the remaining portion shall remain in  
20 full force and effect as if such portion had not been included  
21 herein.

22 6.04 Article Headings. Headings at the beginning of  
23 each numbered article of this Covenant are solely for the  
24 convenience of the parties and are not a part of the Covenant.  
25

26 6.05 Recordation. This instrument shall be executed by  
27 the Covenantor and by the Site Mitigation Branch Chief,  
California Department of Toxic Substances Control. This  
instrument shall be recorded by the Covenantor in the County  
of Monterey within ten (10) days of the date of execution.

1 6.06 References. All references to Code sections  
2 include successor provisions.  
3

4 6.07 Cure. The Department shall give Covenantor written  
5 notice and a reasonable opportunity to cure any alleged  
6 default by Covenantor prior to exercising its remedies.  
7

8 6.08 Force Majeure. Covenantor's obligation hereunder  
9 shall be tolled during the period of any force majeure event.  
10

11  
12 IN WITNESS WHEREOF, the parties execute this Covenant as of  
13 the date set forth above.  
14

15 OWNER: SOUTHERN PACIFIC TRANSPORTATION CO.

16 By: [Signature]

17 Title: Its Vice President

18 Date: NOV. 25 1992

19  
20  
21 DEPARTMENT OF TOXIC SUBSTANCES  
22 CONTROL

23 By: [Signature]

24 Barbara J. Cook, Chief

25 Site Mitigation Branch, Region 2

26 Date: 11/16/92

REEL 2879 PAGE 862

EXHIBIT A

Legal Description of The Property

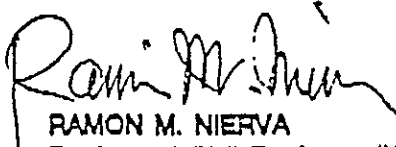
DESCRIPTION OF 1.80 ACRE PARCEL  
IN SOUTHERN PACIFIC COMPANY "SPENCE STATION"  
FOR SOUTHERN PACIFIC LINES

REEL 2879 PAGE 863

CERTAIN real property situate in Rancho Buena Esperanza, County of Monterey, State of California, particularly described as follows:

COMMENCING at a point on the westerly boundary of that certain tract of land locally known as and called "Spence Station", and being the second parcel of land described in the deed of a certain 10 acre tract conveyed by David Spence to Southern Pacific Branch Railroad Company by deed dated July 14, 1874 and recorded July 23, 1874 in Volume "Q" of Deeds, page 149, Official Records of Monterey County, California; said point also being the intersection of said boundary with the southeasterly boundary of that certain parcel described in deed from Sierra Pacific Realty, Inc. to Georgia-Pacific Corporation recorded September 20, 1989 in Reel 2413, at Page 589, Official Records of Monterey County, California; thence leaving said southeasterly boundary and continuing along said westerly boundary

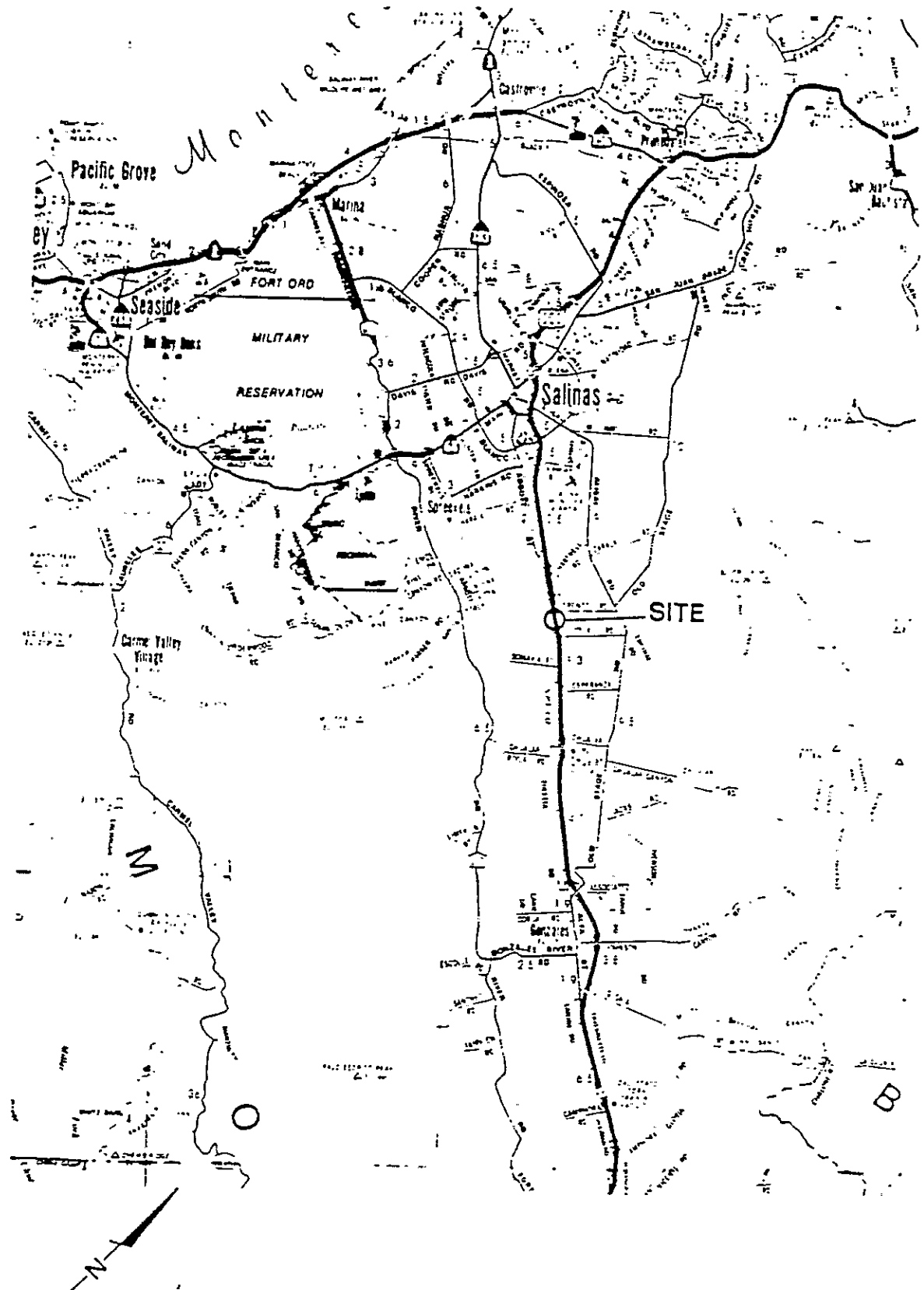
- (A) S.  $47^{\circ} 45'$  E., 73.54 feet; thence leaving said westerly boundary
- (B) N.  $42^{\circ} 15'$  E., 17.30 feet to the TRUE POINT OF BEGINNING; thence
- (1) S.  $47^{\circ} 06' 17''$  E., 512.91 feet; thence
- (2) N.  $42^{\circ} 32' 21''$  E. (at 187.50 feet, an intersection with the easterly boundary of first said parcel), 195.60 feet; thence
- (3) N.  $53^{\circ} 12' 41''$  W. (at 82.79 feet, an intersection with said easterly boundary), 99.50 feet; thence
- (4) N.  $51^{\circ} 49' 44''$  W., 108.48 feet; thence
- (5) N.  $64^{\circ} 24' 27''$  W., 337.86 feet; thence
- (6) S.  $28^{\circ} 33' 57''$  W., 77.68 feet to the TRUE POINT OF BEGINNING.

  
RAMON M. NIERVA  
Registered Civil Engineer #21618  
State of California  
Expires: 30 September 1993

6 November 1992  
W.O. 4914.01  
RMN/cb.4258



EXHIBIT B  
Site Location  
and  
Site Plan



**SITE LOCATION MAP**  
 BERMAN STEEL SITE  
 Salinas, California  
 Dames & Moore

Reference: California AAA - Monterey - San Benito Counties

Figure 2-2

**SITE PLAN**  
 Berman Steel Site  
 Salinas, California  
 Dames & Moore



U. S. Highway 101

Southern Pacific Railroad



GATE

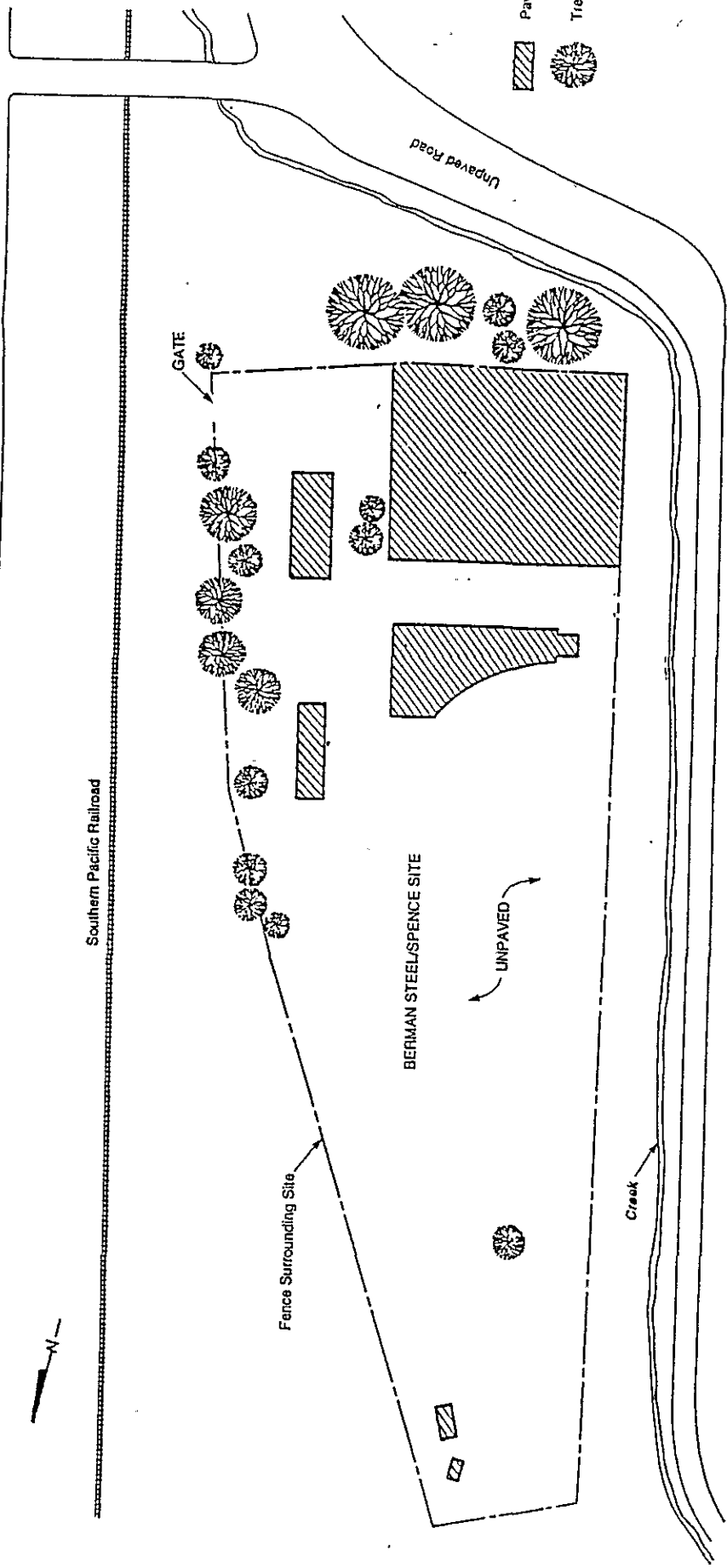
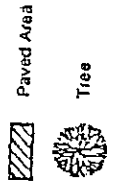
Fence Surrounding Site

BERMAN STEEL/SPENCE SITE

UNPAVED

Creek

Unpaved Road



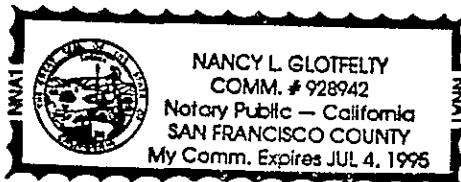
1 STATE OF CALIFORNIA )

2 COUNTY OF San Francisco )

REEL 2879 PAGE 867

3  
4  
5  
6 on November 25, 1992 before me, the undersigned, a  
7 Notary Public in and for said state, personally appeared ==  
8 A. D. Steel, personally known to me or proved  
9 to me on the basis of satisfactory evidence to be the person  
10 who executed the within instrument as Vice President of  
11 Southern Pacific Transportation Co. the corporation that executed the  
12 within instrument, and acknowledged to me that such  
13 corporation executed the same pursuant to its bylaws or a  
14 resolution of its board of directors.  
15  
16

17 WITNESS my hand and official seal.



21 Nancy L. Glotfelty  
22 Notary Public in and for said  
23 County and State  
24  
25  
26  
27

STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA )

on November, 1992 before me, the undersigned, a  
Notary Public in and for said state, personally appeared  
Barbara Jean Cook, personally known to me or proved to  
me on the basis of satisfactory evidence to be the person who  
executed the within instrument as Chief, Site Mitigation  
Branch, Region 2, of the Department of Toxic Substances  
Control, the agency that executed the within instrument, and  
acknowledged to me that such agency executed the same.



WITNESS my hand and official seal.

Karesia Blake

Notary Public in and for said  
County and State

END OF DOCUMENT